physicians, as this would tend to prevent their spread and ultimately wipe them out. It would seem, therefore, that an advertisement relative to sexual diseases, made in good faith, free from vulgarity and obscenity, would controvert no rule of public policy. Hence the statute which provides for revocation of a physician's license for any advertisement relative to the sexual organs was rightfully held unconstitutional.

In the case of *Czarra* v. *Board of Medical Examiners*,[12] the appellant published obscene and indecent pamphlets relating to his ability to cure sexual diseases. It was attempted to revoke his license under a statute which provided for revocation for "unprofessional or dishonorable conduct." The opinion stated *obiter* that such conduct was no doubt both "unprofessional" and "dishonorable" but the court held the statute void for uncertainty.

So it seems that a statute which would accomplish the desired result should provide for the revocation of one's license who should cause to be published any obscene or vulgar advertisement relative to the sexual organs or which tends to deceive or defraud the public.

MUNICIPAL CORPORATIONS AND PRIVATE ENTERPRISE.—It is well settled that a municipality cannot engage in a purely private business enterprise when that enterprise is unattended by a public need.[1] Nor can it engage in a project of a nature other than governmental, without legislative sanction.[2]

The question of municipal engagement in alleged private enterprise is one primarily of taxation, arising on the ability of the State to tax for a purpose not public in its nature. Hence, although the question is one of taxation the conflict of judicial opinion centers around the application of the rule defining public purpose;[3] for a

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[12] *Supra.*

[1] Opinion of the Justices, 58 Me. 509; Haywood *v.* Red Cliff, 20 Col. 33, 36 Pac. 795.

[2] Atty. Gen. *v.* Detroit, 150 Mich. 310, 113 N. W. 1107, 121 Am. St. Rep. 625, where without express grant, it was held that a city could not manufacture bricks even for paving purposes when the bricks were procurable on the market. But see Schneida *v.* Menasha, 118 Wis. 298, 95 N. W. 94, 99 Am. St. Rep. 996, holding that a city has authority by implication to own and run a stone quarry as incidental to its street paving functions.

[3] COOLEY, CONST. LIM., 6 ed. 599: "In this place we do not use the word *public* in any narrow and restricted sense, nor do we mean to be understood that whenever the legislature shall overstep the legitimate bounds of their authority, the case will be such that the courts can interfere to arrest their action. There are many cases of unconstitutional action by the representatives of the people which can be reached only through the ballot box; and there are other cases where the line of distinction between that which is allowable and that which is not is so faint and shadowy that the decision of the legislature must be accepted as final, even though the judicial opinion might be different."

municipal contract is *ultra vires* if no tax could possibly be levied to absolve its liability on that contract.[4]

In the recent case of *Laughlin* v. *The City of Portland* (Me.), 90 Atl. 318, the question under discussion came squarely before the court. The power of the legislature to authorize municipalities to establish and maintain permanently a wood, coal and fuel yard for the purpose of selling these commodities at cost to its inhabitants, was affirmed. The term "at cost," it was provided, "shall be construed as meaning without financial profit." [5]

Narrowed down, the validity of this statute hinges on whether owning and operating a municipal wood, coal and fuel yard is a public business. In other jurisdictions there is irreconcilable conflict.

It has been held that in consequence of public calamity, the legislature may authorize counties to issue bonds for the purchase of seed for indigent farmers.[6] The ground on which the courts upheld this statute was based on the recognized duty of the state to care for its paupers. The beneficiaries of this act, it was asserted, without such aid would become charges upon the public. But even in such cases the weight of principle and authority is the other way. Mr. Justice Brewer, in declaring a similar law unconstitutional in Kansas, used the following language: "These various provisions show that the idea of the legislature was not the relief of the helpless and dependent, but an assistance to a class temporarily embarrassed." [7] On principle it would seem that a relief of the almshouses by a distribution of seed or other commodities to prospective inmates is too contingent and speculative for practical application. *A fortiori,* the legislature cannot authorize a municipality to issue bonds, the proceeds of which go to individuals as a loan for the rebuilding of private property, the loss of which was caused by a great fire.[8]

Since it is well settled that a municipal lighting and water system is for a public purpose,[9] some courts, simply apply the rule of analogy to other commodities of similar universal utility. The manufacture and sale of ice has thus been authorized by the Georgia Legislature and permitted by the court.[10] But the same court was unwilling to admit that the right to supply water im-

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[4] Loan Association *v.* Topeka, 20 Wall. 655.
[5] Public Laws, 1903, c. 122, Rev. Stat., c. 4, § 87.
[6] State *ex rel* Goodwin *v.* Nelson County, 1 N. D. 88, 45 N. W. 33, 8 L. R. A. 283.
[7] State *ex rel* Griffeth *v.* Osawkee, 14 Kan. 322.
[8] Lowell *v.* Boston, 111 Mass. 454.
[9] Hequembourg *v.* Dunkirk, 49 Hun. 550, 2 N. Y. Supp. 447; Linn *v.* Chambersburg, 160 Pa. 511, 28 Atl. 842, 25 L. R. A. 217; Twitchell *v.* Spokane, 55 Wash. 86, 104 Pac. 150, 24 L. R. A. (N. S.) 290, holding that the city could run the plant at a profit.
[10] Holton *v.* Camilla, 134 Ga. 560, 68 S. E. 472, 31 L. R. A. (N. S.) 116.

pliedly carried with it the right to go into the plumbing business.[11]

The Supreme Judicial Court of Massachusetts has had occasion to pass upon this question in the form of an advisory opinion. The court deemed such contemplated statutory enactment to be beyond the powers of the legislature on the strong ground that such business is universally and lawfully engaged in by private individuals everywhere; that no legislative sanction is required to engage in such enterprise; and that it is a natural right subject only to the police power.[12]

There is some element of danger in a lax construction of what is a legitimate public function, because of the consequent limitation of the field for individual enterprise, and because, too, it is hard to check a movement so sure to have the approval of a popular majority.

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[11] Keen *v.* Waycross, 101 Ga. 588, 29 S. E. 42.

[12] Opinion of the Justices, 155 Mass. 598, 30 N. E. 1142, 15 L. R. A. 809.